

TAMIL NADU ELECTRICITY REGULATORY COMMISSION
(Constituted under section 82 (1) of the Electricity Act, 2003)
(Central Act 36 of 2003)

PRESENT:

Thiru S.Akshayakumar	Chairman
Thiru G.Rajagopal	Member
	and	
Dr.T.Prabhakara Rao	Member

M.P.No.24 of 2016

Tamil Nadu Generation and Distribution Corporation Ltd.
Represented by the Chief Engineer / Non-Conventional
Energy Sources

144, Anna Salai
Chennai – 600 002.

... Petitioner
(Thiru M.Gopinathan
Standing Counsel for TANGEDCO)

Vs.

NIL

...Respondent

Dates of hearing : 26-10-2016; 16-11-2016; 09-12-2016;
29-12-2016 and 31-01-2018

Date of Order : 13-03-2018

The M.P.No.24 of 2016 came up for final hearing on 31-01-2018. The Commission upon perusal of the Petition and connected records and after hearing the submissions of the Petitioner hereby makes the following:

ORDER

1. Prayer of the Petitioner in M.P.No.24 of 2016:-

The prayer of the Petitioner in the above M.P.No.24 of 2016 is to-

- (i) fix the banking period as one year from 1st January to 31st December as calendar year instead of existing practice of 1st April to 31st March as financial year to all the existing captive / to be converted captive wind generators commissioned before 31-10-2016 with effect from 01-11-2016 and the unutilised banked energy at the end of calendar year i.e. on 31st December to be sold to TANGEDCO at 75% of normal wind purchase rate;
- (ii) Not to allow banking facility for future wind projects to be established in future (i.e.) from 01-11-2016 and
- (iii) pass such further or other orders as the Hon'ble TNERC may deem fit and proper and thus render justice.

2. Facts of the Case:-

The petition has been filed by TANGEDCO seeking the change of banking period from the financial year to the calendar year and to dispense with the banking facility for future wind projects from 01-11-2016.

3. Contentions of the Petitioner:-

3.1. The Petitioner Board has established a demonstration Wind Farm Project with a capacity of 19.355 MW under the financial aid of Ministry of Non-Conventional Energy Sources, now Ministry of New and Renewable Energy (MNRE), Government of India, NewDelhi.

3.2. Based on the successful functioning of the above demonstration Wind Farm Project, the Private Developers has shown interest in the Wind Sector. The Wind

Energy Generator was allowed to adjust the wind energy to their consumption of HT industries. In order to promote the wind energy sector in near future, the concept of "banking of wind energy" has been introduced to encourage wind energy sector to plan their consumption activities, even though the wind is infirm in nature and limited for a period of six months in a year.

3.3. The policies adopted by the Board from 1986 was 2% wheeling charges, 2% banking charges and in 2001, the banking charges had been increased to 5% from 2%. In 2002, the banking period had been fixed as 1 year from 1st April to 31st March next year and the unutilized banked energy treated as lapsed.

3.4. The Board has followed its own rule of banking upto 15.05.2006. The TNERC on 15.05.2006 has issued Tariff Order No.3 dated 15.05.2006 for wind energy. In which, the Commission has adopted the same concept of banking of wind energy and fixed the banking period of one year from 1st April to 31st March and the banking charges fixed at 5% of the energy banked. Subsequently in 2009, the Commission on 20.03.2009 has issued 2nd wind Tariff Order No.1, dated 20.03.2009. In which the Commission adopted the same concept of banking of wind energy and fixed the banking period of one year from 1st April to 31st March and the banking charges fixed at 5% of the energy banked. Further the unutilized banked energy at the end of banking period has to be encashed at 75% of the normal purchase rate.

3.5. As per the Electricity Act 2003, the STU/Distribution Licensee has to follow the rules and regulations and order of the State Commission for Tariff and other

issues under Electricity Act, 2003, the Board has followed the orders of the Commission for banking of wind energy as ordered in Commission Order No.3 dated 15-05-2016 and Order No.1 dated 20-03-2009.

3.6. As the installed capacity of wind energy reached to 3500 MW, in 2006 itself TANGEDCO started facing problem out of banking. Further in TNEB rules, the wheeling was permitted only to HT industries that too only for 2 HT industries services. But as the Electricity Rules, 2005, the TNERC Intra State Open Access Regulations have been implemented and the Commission permitted unit to unit adjustment to any HT Service and any number of HT service as per the section 9 of Electricity Act, 2003, the captive generation in wind energy has increased. Further, as the Technology Upgradation Fund (TUF) loan has been extended to textile people, the textile industry has installed their wind energy for their captive consumption. Further due to power position of the TANGEDCO, the HT consumers made tie up with wind energy generators, joined as shareholders and availing wind captive consumption. Further, as wind energy is having banking facility, most of the HT consumers are preferring wind captive consumption, hence the wind captive generation has increased to 70% of the wind installed capacity.

Wind Installed Capacity on 31-07-2016 (Board & Pvt)

Sl. No.	Year	Installed Capacity in MW	
		During Year	Cum Total
1	Upto 2005		2040.225
2	2005-2006	857.555	2897.780
3	2006-2007	577.910	3475.690
4	2007-2008	381.075	3856.765
5	2008-2009	430.975	4287.740
6	2009-2010	602.025	4889.765
7	2010-2011	997.400	5887.165
8	2011-2012	1083.460	6970.625
9	2012-2013	174.600	7145.225
10	2013-2014	107.380	7252.605
11	2014-2015	186.250	7438.855

12	2015-2016	158.850	7597.705
13	2016-2017(Sep)	70.450	7668.155

Out of 7600 MW, 1000 MW under REC scheme, in which 350 MW under captive mode. Out of balance 6600 MW, around 4600 MW is under captive mode.

3.7. As the capacity addition of wind energy grows every year and simultaneously as the wind captive generation grows, from 2006 itself, TANGEDCO requested the Commission to dispense the banking facility, while issuing its order in Order No.3 dated 15-05-2006, Order No.1 dated 20-03-2009, Order No.6 dated 31-07-2012 and Order No.3 dated 31-03-2016, TANGEDCO consistently insists to dispense with the banking. However, the Commission deemed it fit to extend it to some more time.

3.8. As per the mandate of National Electricity Policy, non-conventional energy sources are required to be brought at par with the conventional sources of energy by removing the concessional/promotional benefit. In 2011 itself, vide the public notice dated 08.09.2011, the Commission initiated the process. The relevant portion is extracted hereunder:-

"a) Whether competitive bidding to be introduced and tariff determination by the Commission to be dispensed with for wind energy in view of the satisfactory growth of wind energy in this State and in accordance with the tariff policy of Government of India?"

b) Whether banking period to be retained, reduced or dispensed with in view of the satisfactory growth in the installed capacity of wind generators?"

As the TNEB/TANGEDCO for the 20 years from 1986 and the Commission for the 10 years has extended the concessional/promotional benefit of banking facility,

TANGEDCO requested to dispense the banking, but the Commission thinks to extend it to for some more time.

Now the Commission in the order dated 31.03.2016 in RA.No.6 of 2013 has rightly observed that, the State of Tamil Nadu is concerned, the wind sector has been more than adequately promoted to an extent utility is finding it difficult to handle the energy generated from the wind energy generators and facing complaints of rampant back down. Further the Commission observed that such concessions are not to be continued for ever beyond the points of its utility, and have to be gradually withdrawn by adopting such measures which would discourage the practice.

3.9. TANGEDCO from 2012 has requested the Commission to fix the banking period from 1st January to 31st December as calendar year instead of existing practice of 1st April to 31st March as financial year. As CMD/TANGEDCO has rightly pointed out in SAC meeting held on 17.03.2016 that banking has to be allowed with certain restrictions by permitting them to draw during periods of low demand and restricted during high demand seasons peak like done in Andhra Pradesh.

3.10. The Commission in para 10.11.4 of the wind Tariff Order No.3 dated 31.03.2016 has analysed the provisions related to banking of wind energy in the other renewable energy rich states like Gujarat, Rajasthan, Andhra Pradesh and Maharashtra and stated that, the States that have granted banking facility have imposed certain restrictions in the drawal of banked energy. The installed capacity of wind, banking period and restrictions by the above States is as follows:

Sl. No.	State	Banking Period	Usage Restriction
1.	Gujarat	1 month	Surplus energy to be sold to licensee @ 85 % of wind Tariff.
2.	Rajasthan	1 month	10% of surplus energy paid at 60% of industrial Tariff, balance will be lapsed.
3.	Andra Pradesh	12 months (April to March)	Restriction to draw during April to June and February to March and also during peak hours.
4.	Maharashtra	12 months	Credit not permitted for October, November and March.

Here the TANGEDCO has not requested any restriction in the banking period of one year, it has requested calendar year 1st January to 31st December instead of financial year 1st April to 31st March for all the existing wind generators commissioned before 31.10.2016. In this connection, it is stated that, the wind season in TamiiNadu coincides with the South-West monsoon from May to September, as the rains lashes there is reduction of Agriculture load and AC load, considerably the State demand will be reduced and the TANGEDCO with full hydro generation, may have surplus power. During this time as the wind blow is peak and hence entire wind generation under captive mode will be banked during this period. From October to March they will draw the energy from the banking account. During this time as TANGEDCO is in shortage of power due to heavy demand of the State, TANGEDCO has to buy high cost power from outside to resupply the banked energy. If the banking period is fixed from 1st January to 31st December, financial burden on the TANGEDCO will be less because the cost of external power purchase will be reasonable during October to December and the quantum of energy to be returned will also be halved. In that case, the TANGEDCO may settle the unutilized banked energy at the end of 31st December at the rate of 75% of normal purchase

rate of wind energy. It is a win-win situation to TANGEDCO and wind captive generators and the general consumers will be relieved.

4. Hearing held on 26-10-2016:-

In the hearing held on 26-10-2016, the Counsel for the Tamil Nadu Spinning Mills Association prayed to permit to implead in this case and he was directed to file their impleading petition at the time of listing the matter for admissibility.

5. Hearing held on 29-12-2016:-

In the hearing held on 28-12-2016, Intervening Petition have been filed by the Counsels on behalf of Indian Wind Power Association and Tamil Nadu Spinning Mills Association and objected the admissibility of the main petition. The Miscellaneous Petition filed by the Petitioner was admitted on that day and the Petitioner was directed to upload their petition on the website of the TANGEDCO giving a minimum of 15 days time for stakeholders to offer comments / suggestions. The Counsels for the impleading petitions were also directed to file their comments to TANGEDCO.

6. Comments of the Stakeholders:-

The comments received from various stakeholders are compiled submitted by the Petitioner TANGEDCO with its views / reply to this Commission on 15-02-2017 which may be seen in Annexure II of this order. Certain stakeholders have sent their comments / copy of their comments to the Commission also. The substance of their comments are summarized and placed in Annexure III to this order.

7. Additional affidavit filed by the Petitioner on 26-12-2016:-

In the additional affidavit filed on 26-12-2016, the Petitioner has contended as follows:-

7.1. An important new development that has happened after issue of TNERC Tariff Order No.3 dated 31.03.2016 is the rescission of the notification dated 10.10.2014 issued by the State Government under section 11 of Electricity Act, 2003 whereby all electricity generated was to be supplied within the State. The rescission was effected by GO (Ms) No.41, Energy (AI) Department dated 31.05.2016.

7.2. In regulation 4 of the Principal Regulations and in sub-regulation (1), clause (c), the provision of the Public hearing was mentioned in the NCES Regulations 2008. Subsequently the Commission vide its amendment notification dated 27.04.2009 has deleted the provision of the Public hearing in the NCES Regulations, 2008.

7.3. Further the expression "the tariff and allied issues" in regulation 6 of the NCES Regulations,2008 has been amended by omitting the expression "and allied issues" so that whenever tariff order is revised, the revised tariff is applicable only to the NCES generators commissioned after the date of such revised order, but the revision of allied issues is applicable to all the NCES generators irrespective of the date of commissioning.

7.4. As such, since banking facility is not related to tariff of wind energy but related to allied issues, the relief of amendment can be by a Miscellaneous Petition itself.

7.5. During the wind season May to September, in order to integrate and absorb the wind energy into the grid, the TANGEDCO has to reduce its Thermal generation, Hydro generation, surrender its CGS power by which the TANGEDCO has been incurring losses. In addition due to frequency variation and over drawl / under drawl against the 250 MW bandwidth, the TANGEDCO is incurring losses. It is stated that by incurring loss only the TANGEDCO is absorbing the wind energy into the grid and the so absorbed wind energy is banked by the wind generators and taken back from October to March.

7.6. In order to resupply the banked energy during January to March, TANGEDCO is purchasing high cost power from IPPs, traders and power exchanges. For absorbing the wind energy, TANGEDCO is incurring loss and for resupplying the banked energy also the TANGEDCO incurring loss. If the banking period is changed to January to December, the loss to the TANGEDCO will be reduced.

7.7. The Commission has the power under the Electricity Act, more particularly S.62(4) of the Act to amend the tariff determined as well as the allied issues. The control period of the tariff order being two years and in view of the significant developments that have taken place after the issue of the said tariff order, the changed circumstances warrant that the fixation of the banking period requires to be revisited.

8. Written Submission filed by Tamil Nadu Spinning Mills Association:-

In their Written Submission dated 09-12-2016, the Tamil Nadu Spinning Mills Association has submitted as follows:-

8.1. The matter as to how the Banking period has to be maintained was already decided, declared and is in practice historically from the very beginning of the period by which wind energy installations have commenced the State of Tamil Nadu. Therefore, changing such a historical practice is not required what so ever may be the reason. Moreover, such a system cannot be changed because of the other inter connected provisions of Electricity Rules, 2005 also, which is extracted for the purpose of immediate reference. The Electricity Rules, 2005, through its explanation Clause made under Rule 3 (2), have made it as follows.

"Explanation- (1) For the purpose of this rule.-

a. "Annual Basis" shall be determined based on a financial Year,"

8.2. The captive consumers of any energy is subjected to compliance of the "Captive Consumption Norms" in respect of their Financial stake as well as the consumption of power in a specified time period. The time period for verification of the captive consumption compliance norms is provided as "Annual Basis" and accordingly, the term annual basis is also defined as Financial Year, as per the above quoted provisions under the Electricity Rules, 2005.

8.3. The high wind season in Tamil Nadu starts only by June of every year and mostly ends by September of the same year. Hence, considering the generation available during the high wind season between June and September, the banking period has been fixed and maintained historically between April and March of next year so as to allow the captive consumers to generate the wind energy by first six months and thereafter, coupled with the generation happening during the low wind

season, to meet out the power requirements for the next six months which ends by March of the subsequent year.

8.4. If the banking period is altered to be converted from Financial Year to Calendar Year, it would affect the interest of the wind energy captive consumers by restricting the availability of banked units only up to December. Thereafter, for consumption during the months of January - March, no banking unit would be made available for anyone as the banking period would close by December. This would take away the rights of the wind energy captive consumers as was ensured by various statutory orders provided by Hon'ble APTEL and also by the Commission.

8.5. Allowing to alter the banking arrangement from Financial Year to Calendar Year would collapse the whole system and all the Wind Energy Generators would be financially sick and it amounts to forcibly permit the TANGEDCO for unjust enrichment at the cost of wind energy generators.

8.6. The energy for encashment would be abundantly available to TANGEDCO and the said energy is allowed for encashment only at the 75% of its sale value. Mostly, at the cost of 75% of Rs.2.75, it will be allowed for encashment, whereas the TANGEDCO would have sold the energy already at Rs.6.57 on an average to industrial consumers.

8.7. The Commission issued on 15.05.2006 in Order No. 3 of 2006, on 20.03.2009 issued in Order No.1 of 2009, on 31.07.2012 in Order No. 6 of 2012 and on 31.03.2016 in Order No. 3 of 2016 categorically directing to maintain the banking

period only on a "Financial Year Basis" considering the special nature of the wind power generation in the State of Tamil Nadu.

8.8. The banking is no more a favour and has become a system which has been "contractually and judicially recognized" as per the observations of the Hon'ble APTEL and even by the Commission.

8.9. The facility of banking has become, always an accrued right for the windmill captive consumers and without the same, they would not have thought about going for the investment in WEG installation as it is not viable for the high cost of investment they have made.

8.10. Normally the peak wind season in Tamil Nadu exists in the month of June and extends up to September. Normally all the hydro electrical projects are dry due to the acute summer during April/May and as such they may not be producing the required Electricity during those months. Hence, the wind generators are coming to the rescue of the TNEB during such hard times and accordingly, they are continuously helping the TNEB to manage the power position during such occasions.

8.11. The banking arrangement at any cost needs to be maintained as such without attempting to go for altering the banking period. In fact, in order to help the wind electric generators in the most effective way to utilize the banked energy, the banking period needs to be revised from the present block of April-March to June-May and accordingly, all will be benefitted. Hence, the petitioner submits that the banking is no more a facility or concession and therefore, it requires to be

maintained only at the Financial Year or it could be changed to a block of June-May for more convenience by amending the Electricity Rules, 2005 as far as the explanation portion of the Rule 3(2) and till such time, the present banking period of Financial Year needs to be continued as such.

8.12. The Energy Wheeling Agreements already signed between the TANGEDCO and the WEG developers for captive consumption, the agreement clearly says that the banking period is to be maintained on Financial Year wise.

8.13. Further, the concept of promissory estoppel and legitimate expectation also is involved while reviewing any terms of the EWA in respect of existing agreements and therefore, legally, the petition is not maintainable under the provisions of law of contract.

9. Findings of the Commission:-

9.1. We have heard the petitioner and the learned Counsels who represented M/s.IWPA and M/s.SIMA at length. The short questions which arise for consideration in this petition, in our view, are two-fold i.e., (a) whether the banking period laid down in the Tariff Order No.3 of 2016 dated 31-03-2016 can be changed during the middle of the control period for those plants which were commissioned before 31-10-2016 and (b) whether the banking facilities to the wind generators can be denied in future to those plants to be established from 01-11-2016. Insofar as the other contentions are concerned, we find that it is not necessary to deliberate at length. As regards the issue (b) i.e., the dispensing with of the banking facilities to the wind generators altogether in future from 01.11.2016, it is to be noted that validity of the banking

facility extended to the Wind Generators in T.O.No.3 of 2016 dated 31.03.2016 which is under challenge herein is also a subject matter before the Hon'ble APTEL and therefore, we would like to refrain ourselves from taking up the issue when the control period of the said order is in force. However, we are inclined to leave open the issue of extension of banking facility in future orders based on the comments of the stakeholders which will be discussed in the succeeding paragraph more succinctly.

As regards, (a) the change of banking period from 1st January to 31st December instead of 1st April to 31st March as sought for by the petitioner, it is the contention of the petitioner Corporation that such change is required to prevent loss to the petitioner on account of banking. On the other hand, the learned Counsels representing M/s.IWPA and M/s.SIMA have argued that as per the Electricity Rules, 2005, the term "annual basis" refers to the financial year and therefore, the banking should be allowed only for the financial year and not for the calendar year. They have also argued that the present prayer with regard to banking is relatable to tariff and therefore, it cannot be brought up before the Commission in the form of a Miscellaneous Petition. They have relied upon regulation 8 of the Power Procurement from New and Renewable Sources of Energy Regulations, 2008 which reads as follows:-

"8. Issues related to captive use and third party sale:-

While issuing the general or specific tariff order, the Commission may consider appropriate criteria/ procedure/parameters/charges for each type of new and renewable source, on the following issues, for sale of power to distribution licensee, captive use and third party sale of power by the new and renewable source generators.

- 1) *Applicable demand charges;*
- 2) *Applicable energy charges;*
- 3) *Grid availability charges;*
- 4) *Scheduling and system operation charges;*
- 5) *Transmission & wheeling charges and line losses;*

- 5A) Banking charges;
- 6) Reactive power charges;
- 7) Adjustment of peak and off peak power;
- 8) Power factor disincentive;
- 9) Payment of security deposit by the captive/third party user;
- 10) Billing and payment to the generators by distribution licensee;
- 11) Applicable open access registration fee and open access agreement fee;
- 12) Any other related issues.”

9.2. The learned Counsels further argued that inasmuch as the banking charges is one of the issues which is required to be considered at the time of tariff order under the above regulation, the present prayer for change of banking period during the currency of the control period is not maintainable. Apart from the above, they have also opposed the prayer on many other counts which are briefly as follows:-

- a) change of banking period before the expiry of the control period is not permissible.
- b) *res judicata* i.e., prayer for change of banking period having been already considered and rejected in the tariff order 2016, raising the same issue is barred by the principle of *res judicata*.
- c) no grounds have been made for review of the tariff order in regard to change of banking period etc.

9.3. On a total consideration of the arguments advanced by the petitioner on the need to change the banking period to a calendar year instead of the financial year as is being followed now, on the grounds of monetary loss to the petitioner Corporation and the arguments advanced by the learned Counsels for M/s.IWPA and M/s.SIMA on various grounds, we are of the considered view that the banking is only an allied issue in the wind tariff order unlike tariff and control period as may be seen from regulation 8 of the Power Procurement from New and Renewable Energy Sources Regulations, 2008 and therefore, it is an issue which can be considered for modification during the control period. However, it is to be noted that the

Commission has recently come out with a consultative paper for determination of generic tariff for wind energy and for related issues wherein the evolution of banking of wind energy and its contentious nature has been discussed and various options suggested. Since the banking has always remained a bone of contention between the Licensee and Wind Energy Generators with the licensee seeking the dispensation of banking facility and the WEGs seeking retention of the same at the time of every tariff revision exercise, Commission is of the view that it would be appropriate to deal with the concept of banking at the time of comprehensive tariff revision exercise. In the consultative paper floated by the Commission recently various options with regard to the banking have been placed in the public domain for comments. A final decision on the issue will be taken only at the time of issue of the next tariff order after consideration of comments of the stakeholders. In view of the same, we deem it appropriate not to interfere with the period for banking prescribed in the impugned order as the next tariff order for the wind generation is in the offing in view of the expiry of the control period in the coming month. The Petitioner is at liberty to raise the above issue when the next tariff revision exercise to be undertaken by the Commission shortly by responding to the Consultative Paper, if need be. The prayer of the Petitioner is therefore disposed of accordingly.

10. Appeal

An appeal against this Order shall lie before the Appellate Tribunal for Electricity under section 111 of the Electricity Act 2003, within a period of 45 days from the date of receipt of a copy of this order by the aggrieved person.

(Sd)
(Dr.T.Prabhakara Rao)
Member

(Sd.....)
(G.Rajagopal)
Member
/ True Copy /

(Sd.....)
(S.Akshayakumar)
Chairman

Secretary
Tamil Nadu Electricity
Regulatory Commission

ANNEXURE-I

List of stakeholders from whom the Comments/Suggestions received

Sl. No.	Address of Stakeholders
1.	M/s.Pandian Chemicals Ltd Vellabhai Road, Madurai – 625 002.
2.	M/s.Santhi Casting Works Post Box No.5506, Coimbatore -641 031.
3.	M/s.Emerald Jewel Industry India Ltd R.S.Puram, Coimbatore -641 002.
4.	M/s.Concorde Textiles Mylapore, Chennai-4.
5.	M/s.Sri Venkatesa Business Company (P) Ltd Peelamedu, Coimbatore -641 004.
6.	M/s.Prakash Vidyut Ltd Aralvoimozhy-629 301 - Kanyakumari Dist.
7.	M/s.C.R.I. Pumps Pvt. Ltd Saravanapatty, Coimbatore -641 035.
8.	M/s.KVS Windmills Pvt. Ltd Vadavalli, Coimbatore -641 041.
9.	M/s.Bansal WindMill Pvt. Ltd Industrial Area, New Mangalore-575 011.
10.	M/s.Tirupur Export Knitwear Industrial Complex TEA Nagar, Tirupur-641 606.
11.	M/s.Venbro Polymers 304, Bhavani Main Road, Erode – 638 004.
12.	M/s.Concorde Agencies Mylapore, Chennai-4.
13.	M/s.Arumayall Textiles (P) Ltd Gandhi Nagar Road, Kalingiam – 638 453.
14.	M/s.VXL Systems 59, Sidco Industrial Estate, Coimbatore -641 021.
15.	M/s.Shri Gowrishankar Agencies Pvt. Ltd RO:68, Bazaar Street, Pollachi – 642 001.
16.	M/s.Lakshmi Card Clothing Manufacturing Company Pvt. Ltd Semmipalayam Village, Kuppaswamynaidupuram – 641 662. Tirupur Dist.
17.	M/s.Vinayaka Electro Alloys (I) Pvt. Ltd Ingur, Perundurai – 638 052. Erode Dist.
18.	M/s.TexTech Indo (India) Pvt. Ltd Avinashi Road, Coimbatore -641 018.
19.	M/s.Dhansar Energy Pvt. Ltd Kochadai, Madurai-625 016.
20.	M/s.ABT Ltd 180, Race Course Road, Coimbatore -641 018

21.	M/s.Dalmia Tata Plantation & Industries Ltd WEG HT SC No.3765, Tirunelveli EDC.
22.	M/s.Century Flour Mills Limited 6, Esplanade, Chennai -108.
23.	M/s.Bateli Tea Company Ltd WEG HT SC No.3126, Tirunelveli EDC.
24.	M/s.Deccan Estates Ltd WEG HT SC No.G361, Thalaiyuthu.
25.	M/s.Deccan's Park Ltd WEG HT SC No.E800, Dharapuram.
26.	M/s.Deccan's Park Ltd WEG HT SC No. 2422 & 2423, Tirunelveli.
27.	M/s.Deccan Event Management (P) Ltd Karadivavi, Keethanur.
28.	M/s.Sundaram Textiles Ltd Kochadai, Madurai-625 016.
29.	M/s.Tamilnadu Air Products Pvt. Ltd Aminjikarai, Chennai -29.
30.	M/s.TN Oxygen Pvt. Ltd Ambattur, Chennai -95.
31.	M/s.Srri Shamundi Spinners (P) Ltd Marudhur, Dharapuram.
32.	M/s.Yash Metal Resources Pvt. Ltd Peelamedu Post, Coimbatore -641 004.
33.	M/s.Century Energy Trading LLP 6, Esplanade, Chennai -108.
34.	M/s.Public Health Centre West Mambalam, Chennai -33.
35.	M/s.Star Plastics Kolathupalayam, Gangapuram Post.
36.	M/s.Star Plastics – Unit-II Ondikkaranpalayam, Villarasampatti (Post)
37.	M/s.Star Plastics – Unit-III Attayampalayam, Gangapuram (Post).
38.	M/s.Shobikaa Impex Pvt. Ltd Sannathi Street, Vennaiyalai (P.O.)
39.	M/s.Mehta Export Corporation Angeripalayam Road, Tirupur – 641 603.
40.	M/s.Dattatreya Textiles Pvt. Ltd Maruthur Road, Therkutheru Post-625 122- Madurai Dist.
41.	M/s.K.Ramakrishnan Clean Energy Pvt. Ltd Thalavapalayam P.O., Karur – 639 113.
42.	M/s.Goldstone Construction Pvt. Ltd T.Nagar, Chennai -17.
43.	M/s.Maris Hotels & Theatres Pvt. Ltd Cathedral Road, Chennai -86.

44.	M/s.Mahaveers Saree (P) Ltd Gandhipuram, Coimbatore -641 012.
45.	M/s.Sarmangal Synthetics Pvt. Ltd Gandhipuram, Coimbatore -641 012.
46.	M/s.Nalco Metal Products Ltd Maravankulam, Thirumangalam-625 706.
47.	M/s.The Metal Powder Company Ltd Velayutham Road, Sivakasi – 626 123.
48.	M/s.Nandhi Spinning Mill (P) Ltd Udumalpet Road, Dharapuram – 638 656.
49.	M/s.Vaata WindFarms Pvt. Ltd Ashok Nagar, Chennai -83.
50.	M/s.Sri Venkateshwara Boards Railway Feeder Road, Sattur-626 203.
51.	M/s.Sattur Venkateshwara Paper Mills (P) Ltd Railway Feeder Road, Sattur-626 203.
52.	M/s.Lakshmi Wind Farms Railway Feeder Road, Sattur-626 203.
53.	M/s.Sri Balaji Wind Mills Thillai Nagar, Sattur-626 203.
54.	M/s.The Creative Texture S.N.Puram, Sivakasi-626 130.
55.	M/s.The Creative Wind Farm Gnanagiri Road, Sivakasi-626 189.
56.	M/s.SPI Properties Pvt. Ltd College Road, Chennai -6.
57.	M/s.NAK Wind Farm Pvt. Ltd Thirunagar Colony, Erode – 638 003.
58.	M/s.A.R.Dairy Food Pvt. Ltd Begampur Post, Dindigul-624 002.
59.	M/s.Nala Hotels (P) Ltd Trichy Main Road, Namakkal – 637 001.
60.	M/s.Tirupur Textiles Pvt. Ltd Anupparpalayam, Tirupur-641 603.
61.	M/s.TCW Renewable Energy (India) Pvt. Ltd Sector 17,Vashi Navi Mumbai-400 703.
62.	M/s.Rajapalayam Mills Ltd Ramasamy Raja Salai, Rajapalayam-626 117.
63.	M/s.Erode Dye Chem Kumaran Road, Tirupur-641 601.
64.	M/s.Erode Chemicals Kumaran Road, Tirupur-641 601.
65.	M/s.Maris Power Trading Company LLP Cathedral Road, Chennai – 86.
66.	M/s.Livia Polymer Bottles Pvt. Ltd Nandanam, Chennai-31.

67.	M/s.Dalmia Laminators Ltd Tirunelveli EDC & Tirupur EDC.
68.	M/s.Twowin Textile Process Veerapandi, Tirupur-641 605.
69.	M/s.Twowin Export Dharapuram Road, Tirupur 641 608.
70.	M/s.Hindustan Platinum Pvt. Ltd Pawane, Navi Mumbai – 400 703.
71.	M/s.Sunrise Knitting Mills Kumaran Road, Tirupur-641 601.
72.	M/s.Shri Shakthi Weaving Mills (P) Ltd Annur, Coimbatore-641 653.
73.	M/s.Meenakshi (India) Ltd Royapettah, Chennai-14.
74.	M/s.Sandfits Foundries Pvt. Ltd Kumaran Kottam, Sullur – 641 402. Coimbatore
75.	M/s.Karur K.C.P. Packkagings Ltd Ambarampalayam, Pollachi-642 103.
76.	M/s.Anugraha Value Castings Ltd Arasur Village, Coimbatore-641 407.
77.	M/s.Orient Green Power Company Ltd Egmore, Chennai-8
78.	M/s.Tata Power Renewable Energy Ltd, Carnac Bunder, Mumbai – 400 009.
79.	Thiru.S.Narayanaswamy, T.Nagar, Chennai-17.
80.	The Southern Indian Mills' Association Race Course, Coimbatore – 641 018.
81.	Prof.Dt.K.Kasthurirangaian, Indian Wind Power Association, Avinashi Road, Coimbatore – 641 108.
82.	Tamilnadu Spinning Mills Association Karur Road, Modern Nagar, Dindigul-624 001.

ANNEXURE-II

Reply of TANGEDCO to the comments by Various Stakeholders

I. Comments / Suggestions received from Indian Wind Power Association & 78 Nos. of other stake holder in as per the Annexure-I A

The brief description of the comments by IWPA & 78 Nos. of other stake holder annexure are:

1. Regarding maintainability of this M.P. Petition and the control period.
2. Claiming that the banking is also a part of tariff order and so only legal ways of interfering within the control period is by way of Review petition or appeal at APTEL.
3. Change in banking period is contrary to the National Electricity Policy, National Tariff Policy as also the TNERC & CERC Regulations.
4. The Electricity Rules 2005, defines the annual basis as Financial year.
5. Since captive generations are meant for captive use within the state, the recession of the notification dt:10.10.2014 issued by the State Government under section 11 of Electricity Act 2003 will not have any fundamental change in circumstances within 6 months of Tariff Order 3/2016 as claimed by TANGEDCO.

TANGEDCO's reply:

Regarding the maintainability of this Miscellaneous Petition it has been explained in detail in the additional affidavit filed in the miscellaneous petition itself. Further, as per the amendment to the regulation 6 of the power procurement from New and Renewable Sources of Energy Regulations 2008 wherever tariff order is revised the revised tariff is applicable only to the RE Generators commissioned after the date of such revised order, but the revision of allied issues like banking is applicable to all the RE generators irrespective of the date of commissioning. Hence the Hon'ble Commission can revisit the allied issues and no need for going to APTEL for appeal.

Regarding the suggestion of the stake holder regarding the National Electricity Policy which envisages promotion of RE, the observation of the Hon'ble Commission under section 8.2 (iv) of the order in R.A.No.6 of 2012 dt: 31.03.2016 is worth considering. The extract of the observation is

"Though banking has not been mentioned in the Electricity Act 2003, the facility of banking has been extended time and again to the wind energy generation in the State. For reasonably compensating the loss to the

distribution licensee on account of banking of wind energy, the Commission examined different alternatives. However, now both the remand applicants and the respondent have contested the average purchase cost through bilateral trading segment (All India) being taken as benchmark for adjustment for the purpose of banking in the Tariff order 2012.

Such concessions like banking are essential to promote investments in the sector. These are parts of hand holding exercise for the industry to grow, mature and stand on their own. It is also necessary to infuse confidence in the minds of investors that there is a continued and sustained policy which does not undergo flip flops or irrational and drastic changes. It is with this view the concessions are to be looked into. However, it is equally essential that these hand holding concessions are reviewed and slowly withdrawn as the maturity level of the sector grows up for, continuing concessions admittedly means that someone else is paying for the concessionaire. It is necessary to understand that there is no free lunch in a free market. The test of maturity lies in testing the growth. The capacity of wind energy generator which was little over 4000 MW at the beginning of 2009 has approached near the 7000 MW mark at the end of 2011. The number of established players in the sector has also substantially increased. While the installed capacity of the utility from other sources of energy stood at 10,237 MW, the same from wind energy was 6971 MW. Hence, so far as the state of Tamil Nadu is concerned, the wind sector has been more than adequately promoted to an extent that utility is finding it difficult to handle the energy generated from the wind energy generators and facing complaints of rampant back down. It is therefore time that the promotional concessions are gradually withdrawn. It is in this light the concession of banking is to be looked into. This concession is not mandated in the Electricity Act 2003 and many states do not have this provision. Even in the States where banking facility has been extended, it is not in the same form as is being extended in the State. There the concessions of banking are much limited. Instead of withdrawing the concession abruptly the Commission decided to compensate the losses that would be sustained by the utility in the process of extending this facility."

The Hon'ble Commission itself has been convinced that the wind generators are adequately promoted for 20 long years and promotional benefits needs to be withdrawn gradually. Hence the extension of such promotional benefit to captive wind generators will unduly enrich them by way of multiple promotional benefits being continuously extended like preferential tariff, preferential wheeling, transmission charges and scheduling and system operating charges at 40% of the conventional charges.

In view of the changed circumstance the prayer of TANGEDCO which prays for only change of banking period is to be seen in the light of observation of the Hon'ble Commission itself under 8.2 (vi) of the order in R.A.No.6 of 2016, which is extracted below:

"it is equally essential that these hand holding concessions are reviewed and slowly withdrawn as the maturity level of the sector grows up for, continuing concessions admittedly means that someone else is paying for the concessionaire."

And the "someone else" mentioned in the observation is only the "general public".

Hence TANGEDCO's prayer to marginally restrict banking is worth to be considered by the Hon'ble Commission.

(4) Regarding the mention of "annual basis" in the Electricity Rule as academic year it is submitted that the Electricity Rule does not mandates banking to be only on academic year but only speaks about norms for captive generation as

As per the Electricity Rules 2005 and as per section 9 of electricity act 2003, the norms of Captive Generating Plant states that, Wind Electric Generators who are requesting wheeling must have

- a) not less than 26% of the ownership (on the Generating Company) is held by the captive user and
- b) also not less than 51% of the aggregate electricity generated in such plant (above WEG), determined as an annual basis, are consumed for the captive use.

The changing of banking period from January to December does not alter the norms of eligibility of captive generators since for eligibility criteria of "51% consumption on annual basis" is to be calculated on academic year only. In other words the generation in any 12 months say (A) period is only taken for calculating consumption for the same (A) period of 12 months for arriving the norms of 51% consumption and generation in 12 months of (A) period is not going to be calculated against the consumption in another 12 months say (B) period. Hence it is stated that the above argument is misleading and is to be rejected since even the total withdrawal of banking itself does not going to alter the norms of captive generators defined in the Electricity Rule 2005. The banking facility in other states like Gujarat, Andhra Pradesh and Rajasthan varies in nature and period. Hence Electricity rule 2005 does not have any relevance to the banking period or facility given.

5. Regarding the contention of the stakeholder that the lifting of restriction under section 11 of the Electricity Act 2003 permitting the generator to sell the power outside the state and the apprehension that it cannot be considered as a new development, it is informed that, the larger meaning of lifting of restriction under Section 11 of the Electricity Act 2003 permitting the generators to sell the power outside the state is because of the surplus power position of the utility and this situations of surplus power and opening the avenue of selling power to other states is a major development in light of the situation when the tariff order 3 of 2016 was perused during January 2016, when the state's power position is not so good which forces the State Government for restriction of sale of power to other states under section 11 of the Electricity Act 2003.

II. Comments / Suggestions received from South Indian Mills Association

The comments of SIMA are summarized below:

- 1.1 The commission's observation in M.P.No.42 of 2008 which supports retention of banking.
- 1.2 The wind energy has continuously saved TANGEDCO during severe power cut.
- 1.3 Purely based on the promise of Government only, the textile mills have invested heavily and banking alone is the only solution.
- 2.0 The average realization of power by TANGEDCO is around Rs.6 per unit, for the captive banked units and so no loss to TANGEDCO.
- 3.0 Maintainability of this Miscellaneous Petition.
- 4.0 Recession of the notification dt.10.10.2014 under Sec 11 of Electricity Act 2003 cannot be considered as a new development.
- 5.1 Banking is not an allied issues related to tariff and it is the issue related to Open Access.
- 5.2 Tariff changes normally be applied to take effect from 1st day of ensuring financial year.
- 5.3 The Hon'ble Commission has not accepted the request of TANGEDCO for changing the banking period in the Order No.3 itself and so TANGEDCO has to appeal to APTEL only.
- 5.4 Lifting of ban on sale of power to other states under Sec 11 is not related to captive consumer.

TANGEDCO's reply:

1.1 & 1.2:- Regarding this contention of the stakeholder referring the Hon'ble Commission's observation in M.P.No.42/2008, it is replied that the power scenario has dramatically changed from the year 2008 and TANGEDCO is now in power surplus stage compared to the severe power shortage during 2008. Further the

need for curtailment of banking is emphasized by the Hon'ble Commission by the order in R.A.No.6 of 2012, while given the decision of Hon'ble Commission under **"abnormal rise of banking"** in 8.2 (iv) of the order the Hon'ble Commission observed as follow:

"It is therefore time that the promotional concessions are gradually withdrawn. It is in this light the concession of banking is to be looked into. This concession is not mandated in the Electricity Act 2003 and many states do not have this provision. Even in the States where banking facility has been extended, it is not in the same form as is being extended in the State. There the concessions of banking are much limited."

1.3 Regarding your contention of the petition that they have invested only on the promise of banking facility it is replied that the banking is a promotional measure only and it is not mandated anywhere in the Act or orders. Further the investment is adequately taken care by the Hon'ble Commission while fixing the tariff and the wind generators have availed the promotional benefit for more than their investment since 1986 and it is the right time to restrict the promotional benefit of banking on the larger interest of the general public, since the burden of banking facility is not sustainable by the utility anymore. In view of the present changed scenario, TANGEDCO prays the Hon'ble Commission to restrict the banking since the captive wind generators are unduly getting enriched by multiple promotional benefits extended like preferential tariff, preferential wheeling, transmission charges and scheduling and system operating charges in addition to banking facility.

2.0 The contention of the SIMA and their calculation is misleading and devoid of facts. The way of calculation itself is wrong. The Hon'ble Commission rightly observed in its finding in R.A.6/2012 vide 8.2 (iv) as:

"Let us try to understand as to what happens to the energy banked at the time of its injection as well as its withdrawal. When the generator generates more energy than what he can consume the extra energy thus generated and injected into the grid is the banked energy. The law of electricity dictates that at any point of time the energy injected shall exactly be equal to the energy consumed. It can't be more or less but need to be exact. Therefore one may wonder as to what happens to extra energy injected in. As the supply has to be equal to the demand, the above energy may be consumed in the following ways:

- i) Creating a demand locally within the area of licensee*
- ii) Backing down generation from other sources of energy*
- ii) Allowing the extra energy to pass through the licensee's boundary as *Unscheduled Interchange (UI)**
- iii) Selling to other licensees or parties.*

When demand and supply equal each other, creating a demand within the licensee's area to absorb the additional generation is theoretically difficult one. May be, for example, the licensee would increase the number of hours of supply to the consumers like agriculture where they are required to be fed for a restricted hours. The revenue to the licensee out of this mode of adjustment is nil since it is getting paid annual subsidy by the Government of TamilNadu on fixed number of units per horsepower per annum basis.

Another possibility is to back down generation from power plants operating with other resources. The technical limitations would restrict the quantum or level up to which the backing down can be resorted to. Further as the backing down progressively increases the variable cost of power from such sources would see a rapid dip.

It may also be possible to let the energy flow into the grid and be consumed by any other utility/licensee who is in need at that point of time. Payment for such energy transaction is settled under UI mechanism or deviation settlement mechanism. The Grid code discourages the practice of unscheduled interchange and stipulates stringent conditions and penal measures.

Finally the extra power can be sold in the market. If the licensee can foresee the quantum of excess energy that may be available, in advance, it has the option of selling the same through the exchanges. As the quantum that could be banked on the given day is pretty difficult to predict in advance and initiate sale of the same through the exchange. Again the rate that can be realized from selling through exchanges depends on the demand vs supply equation. As additional energy is tended to be sold in the exchange the final derived rate would tend to go down from what it would be in the absence of such energy."

From the above observation it is clear that the rate for the banked energy is a dynamic parameter in nature which depends on the number of variable factors such as UI rate, supply & demand criteria etc.

Considering the above facts it is highly an imaginary calculation which needs no further consideration. Further the purchase rate of Rs.4.94, and realization rate of Rs.5.70 adopted for the calculation by the stakeholder, it is stated that the rate adopted cannot be taken as it is, since the cost of supply at the consumer premises includes distributions and commercial losses of around 20% in addition to the investment and administrative cost to TANGEDCO which when added is much more than the Rs.4.94 taken by the stakeholder, which are conveniently omitted by the stakeholder. Similarly the realization rate of Rs 5.70 is to be deducted with the distributions and commercial losses of around 20% in addition to administrative expenses etc., to TANGEDCO which are difficult to quantify. In view of this, your contention that there is no loss to the TANGEDCO is to be summarily rejected.

3.0 Regarding the comments of the stake holder about the maintainability of the writ petition it is stated that the TANGEDCO has explained sufficiently in the affidavit and in the additional affidavit filed before the Hon'ble TNERC in the Writ Petition.

4.0 Regarding your contention that lifting of the restriction under section 11 of the Electricity Act 2003 permitting the generator to sell the power outside the state and your inference that it cannot be considered as a new development, it is stated that, the larger meaning of the lifting of restriction under section 11 of the Electricity Act 2003 permitting the generator to sell the power outside the state is to be taken. It is because of the surplus power position of the utility the section 11 was withdrawn and this situation of surplus power and opening the avenue of selling power to other states is a major development in light of the situation when the Comprehensive tariff order on wind energy vide order No 3 of 2016 dated 31.3.2016 was perused during January 2016, when the state's power position is not so good which forces the restriction of sale of power to other states as imposed by section 11.

5.0 Regarding contention of the stakeholder that banking is not an allied issue, it is stated that, other than the tariff all other issues are allied issues including open access charges and it needs no further explanation as mentioned explicitly by the Hon'ble Commission in section 7.1 of the Comprehensive tariff order on wind energy vide order No 3 of 2016 dated 31.3.2016 as

7.1 The Commission has carried out a detailed analysis of the existing policies/procedures and commercial mechanisms in respect of wind power generation. The tariff determined in a cost plus scenario, would depend significantly on the following operating and financial parameters:

- 1. Capital Investment*
- 2. Capacity Utilization Factor*
- 3. Operation and Maintenance expenses*
- 4. Insurance cost*
- 5. Debt-Equity ratio*
- 6. Term of Loan and Interest*
- 7. Life of plant and machinery*
- 8. Return on Equity*
- 9. Depreciation rate applicable*
- 10. Interest and Components of Working Capital*

From the above observation of the Hon'ble Commission, it is clear and explicit that all other issues are allied issues. As such, since the banking facility is not related to tariff of wind energy but related to allied issues, the relief of amendment can be by a miscellaneous petition itself.

III. Comments / Suggestions received from Thiru.S.Narayanasamy

The Stakeholders comments are summarized below:

- (a) TANGEDCO has not purchased energy at higher cost as claimed by them and relied on the IEX trade transaction for the year 2016.
- (b) Even if the TANGEDCO's claim is partially true, captive consumers are in no way responsible for that as they are only drawing power banked by them,
- (c) As commission has not accepted the change in banking period in the Tariff Order itself TANGEDCO cannot claim to change the banking period within the control period.
- (d) Banking is the right of the captive consumer, and the TANGEDCO's claim is only for making profit.
- (e) No new development has occurred which warrant for this Miscellaneous petition.

TANGEDCO's reply:

(a) Regarding the comment of the stakeholder to take the exchange rate for the calculation of cost of banked energy, it is stated that, the Hon'ble Commission during its decision on R.A.No.6 of 2012 under 8.2 (iv) "abnormal rise of banking charges" has observed:

"Let us try to understand as to what happens to the energy banked at the time of its injection as well as its withdrawal. When the generator generates more energy than what he can consume the extra energy thus generated and injected into the grid is the banked energy. The law of electricity dictates that at any point of time the energy injected shall exactly be equal to the energy consumed. It can't be more or less but need to be exact. Therefore one may wonder as to what happens to extra energy injected in. As the supply has to be equal to the demand, the above energy may be consumed in the following ways:

- iv) Creating a demand locally within the area of licensee*
- ii) Backing down generation from other sources of energy*
- iii) Allowing the extra energy to pass through the licensee's boundary as Unscheduled Interchange (UI)*
- iv) Selling to other licensees or parties.*

When demand and supply equal each other, creating a demand within the licensee's area to absorb the additional generation is theoretically difficult one. May be, for example, the licensee would increase the number of hours of supply to the consumers like agriculture where they are required to be fed for a restricted hours. The revenue to the licensee out of this mode of adjustment is nil since it is getting paid annual subsidy by the Government of TamilNadu on fixed number of units per horsepower per annum basis.

Another possibility is to back down generation from power plants operating with other resources. The technical limitations would restrict the quantum or level up to which the backing down can be resorted to. Further as the backing down progressively increases the variable cost of power from such sources would see a rapid dip.

It may also be possible to let the energy flow into the grid and be consumed by any other utility/licensee who is in need at that point of time. Payment for such energy transaction is settled under UI mechanism or deviation settlement mechanism. The Grid code discourages the practice of unscheduled interchange and stipulates stringent conditions and penal measures.

Finally the extra power can be sold in the market. If the licensee can foresee the quantum of excess energy that may be available, in advance, it has the option of selling the same through the exchanges. As the quantum that could be banked on the given day is pretty difficult to predict in advance and initiate sale of the same through the exchange. Again the rate that can be realized from selling through exchanges depends on the demand vs supply equation. As additional energy is tended to be sold in the

exchange the final derived rate would tend to go down from what it would be in the absence of such energy."

From the above observation it is clear that, the rate for the banked units and rate of units for resupply of banked units is dynamic in nature which depends on the number of variable factors such as UI rate, supply and demand of the grid etc. and hence exchange rate cannot be taken for reference as stated by the stakeholder.

(b) Regarding the contention of the stake holders, that the captive consumers are not responsible for the purchase of high cost power it is replied that, if the banking is only upto December, the need of resupplying the banked units will not raise and the TANGEDCO can realize the dynamic cost of power purchase during the high power cost period from January to April.

(c), (d) & (e): Regarding the comments of Thiru.S.Narayanaswamy, that the Hon'ble Commission has rejected the claim of TANGEDCO in order No.3 of 2016, it is replied that the Hon'ble Commission in its observation on "abnormal rise of banking" under 8.2 (iv) in R.A.No.6 / 2016 has stated:

"It is therefore time that the promotional concessions are gradually withdrawn. It is in this light the concession of banking is to be looked into. This concession is not mandated in the Electricity Act 2003 and many states do not have this provision. Even in the States where banking facility has been extended, it is not in the same form as is being extended in the State. There the concessions of banking are much limited.

Instead of withdrawing the concession abruptly the Commission decided to compensate the losses that would be sustained by the utility in the process of extending this facility." And

"However, the Commission fully appreciates that such concessions are not to be continued for ever beyond the point of its utility and have to be gradually withdrawn by adopting such measures which would discourage the practice."

From the above it is inferred that the Hon'ble Commission itself is accepting the views of TANGEDCO for the gradual withdrawal of banking and hence changing of banking period is well justified in the light of the revised situation as mentioned in the TANGEDCO petition.

IV. Comments / Suggestions received from TamilNadu Spinning Mills Association

The Stakeholders comments are summarized below:

1. Claiming that the banking is contractually and judicially recognized system therefore it cannot be revisited by the Hon'ble Commission.
2. The Electricity rule 2005 defines the annual basis as financial year hence it cannot be changed.
3. Regarding the maintainability of this Miscellaneous Petition and need for revisiting within the control period.
4. The Hon'ble Commission has not accepted the request of TANGEDCO for changing the banking period in the Tariff order No 3 of 2016 Dt 31.3.2016 itself. Hence it is already a settled matter.
5. There is already an energy wheeling agreement which ensures banking period as one year from April to March. Hence it cannot be altered.
6. Banking is not a loss to TANGEDCO and claimed that banking is profitable to TANGEDCO.

TANGEDCO's reply:

1. Regarding the suggestion of the stakeholder that banking is contractually and judicially recognized over the time, it is stated that the latest observation under section 8.2 (iv) of the order in R.A.No.6 of 2012 dt:31.03.2016 is worth considering.

The extract of the observation is

"Though banking has not been mentioned in the Electricity Act 2003, the facility of banking has been extended time and again to the wind energy generation in the State. For reasonably compensating the loss to the distribution licensee on account of banking of wind energy, the Commission examined different alternatives. However, now both the remand applicants and the respondent have contested the average purchase cost through bilateral trading segment (All India) being taken as benchmark for adjustment for the purpose of banking in the Tariff order 2012.

Such concessions like banking are essential to promote investments in the sector. These are parts of hand holding exercise for the industry to grow, mature and stand on their own. It is also necessary to infuse confidence in the minds of investors that there is a continued and sustained policy which does not undergo flip flops or irrational and drastic changes. It is with this view the concessions are to be looked into. However, it is equally essential that these hand holding concessions are reviewed and slowly withdrawn as the maturity level of the sector grows up for, continuing concessions admittedly means that someone else is paying for the concessionaire. It is necessary to understand that there is

no free lunch in a free market. The test of maturity lies in testing the growth. The capacity of wind energy generator which was little over 4000 MW at the beginning of 2009 has approached near the 7000 MW mark at the 52 end of 2011. The number of established players in the sector has also substantially increased. While the installed capacity of the utility from other sources of energy stood at 10,237 MW, the same from wind energy was 6971 MW. Hence, so far as the state of Tamil Nadu is concerned, the wind sector has been more than adequately promoted to an extent that utility is finding it difficult to handle the energy generated from the wind energy generators and facing complaints of rampant back down. It is therefore time that the promotional concessions are gradually withdrawn. It is in this light the concession of banking is to be looked into. This concession is not mandated in the Electricity Act 2003 and many states do not have this provision. Even in the States where banking facility has been extended, it is not in the same form as is being extended in the State. There the concessions of banking are much limited. Instead of withdrawing the concession abruptly the Commission decided to compensate the losses that would be sustained by the utility in the process of extending this facility."

The Hon'ble Commission itself has been convinced that the wind generators are adequately promoted for 20 long years and promotional benefits needs to be withdrawn gradually. Hence the extension of such promotional benefit to captive wind generators will unduly enrich them by way of multiple promotional benefits being continuously extended like preferential tariff, preferential wheeling, transmission charges and scheduling and system operating charges at 40% of the conventional charges.

In view of the changed circumstance the prayer of TANGEDCO which prays for only change of banking period is to be seen in the light of observation of the Commission itself under 8.2 (vi) of the order in R.A.No.6 of 2016, which is extracted below:

"it is equally essential that these hand holding concessions are reviewed and slowly withdrawn as the maturity level of the sector grows up for, continuing concessions admittedly means that someone else is paying for the concessionaire."

And the "Someone else" mentioned in the observation is only the "general public".

Hence TANGEDCO's prayer to marginally restrict banking is worth to be considered by the Hon'ble Commission.

2. Regarding the mention of "annual basis" in the Electricity Rule as academic year it is submitted that the Electricity Rule does not mandates banking to be only on academic year but only speaks about norms for captive generation as

As per the Electricity Rules 2005 and as per section 9 of electricity act 2003, the norms of Captive Generating Plant states that, Wind Electric Generators who are requesting wheeling must have

- a) not less than 26% of the ownership (on the Generating Company) is held by the captive user and
- b) also not less than 51% of the aggregate electricity generated in such plant (above WEG), determined as an annual basis, are consumed for the captive use.

The changing of banking period from January to December does not alter the norms of eligibility of captive generators since for eligibility criteria of "51% consumption on annual basis" is to be calculated on academic year only. In other words the generation in any 12 months say (A) period is only taken for calculating consumption for the same (A) period of 12 months for arriving the norms of 51% consumption and generation in 12 months of (A) period is not going to be calculated against the consumption in another 12 months say (B) period. Hence it is stated that the above argument is misleading and is to be rejected since even the total withdrawal of banking itself does not going to alter the norms of captive generators defined in the Electricity Rule 2005. The banking facility in other states like Gujarat, Andhra Pradesh and Rajasthan varies in nature and period. Hence Electricity rule 2005 does not have any relevance to the banking period or facility given.

3. Regarding the maintainability of this Miscellaneous Petition it has been explained in detail in the additional affidavit filed in the miscellaneous petition itself. Further, as per the amendment to the regulation 6 of the power procurement from New and Renewable Sources of Energy Regulations 2008 wherever tariff order is revised the revised tariff is applicable only to the RE Generators commissioned after the date of such revised order, but the revision of allied issues like banking is applicable to all the RE generators irrespective of the date of commissioning. Hence the Hon'ble Commission can revisit the allied issues and no need for going to APTEL for appeal.

4. Regarding the comments of TASMA that the Hon'ble Commission has rejected the claim of TANGEDCO in order No.3 of 2016, it is replied that the Hon'ble

Commission in its observation on "abnormal rise of banking" under 8.2 (iv) in R.A.No.6 / 2016 has stated:

"It is therefore time that the promotional concessions are gradually withdrawn. It is in this light the concession of banking is to be looked into. This concession is not mandated in the Electricity Act 2003 and many states do not have this provision. Even in the States where banking facility has been extended, it is not in the same form as is being extended in the State. There the concessions of banking are much limited.

Instead of withdrawing the concession abruptly the Commission decided to compensate the losses that would be sustained by the utility in the process of extending this facility." And

"However, the Commission fully appreciates that such concessions are not to be continued for ever beyond the point of its utility and have to be gradually withdrawn by adopting such measures which would discourage the practice."

From the above, it may be inferred that the Hon'ble Commission itself is accepting the views of TANGEDCO for the gradual withdrawal of banking and hence changing of banking period is well justified in the light of the revised situation as mentioned in the TANGEDCO petition.

5. Regarding the contention of the stakeholder that the banking period is mentioned as one year from April to March in energy wheeling agreement already executed it is stated that banking is an "allied issue" and other than the tariff all other issues are allied issues including open access charges and it needs no further explanation as mentioned explicitly by the Hon'ble Commission in section 7.1 of the Comprehensive tariff order on wind energy vide order No 3 of 2016 dated 31.3.2016 as

7.1 The Commission has carried out a detailed analysis of the existing policies/procedures and commercial mechanisms in respect of wind power generation. The tariff determined in a cost plus scenario, would depend significantly on the following operating and financial parameters:

- 1. Capital Investment*
- 2. Capacity Utilization Factor*
- 3. Operation and Maintenance expenses*

4. Insurance cost
5. Debt-Equity ratio
6. Term of Loan and Interest
7. Life of plant and machinery
8. Return on Equity
9. Depreciation rate applicable
10. Interest and Components of Working Capital

From the above observation of the Hon'ble Commission, it is clear and explicit that all other issues are allied issues. As such, since the banking facility is not related to tariff of wind energy but related to allied issues, the relief of amendment can be by a miscellaneous petition itself.

Further the expression "the tariff and allied issues" in regulation 6 of the Principal Regulations has been amended vide amendment notification dt:19.01.2013 by omitting the expression "and allied issues" in the NCES Regulations 2008.

"Regulation 6:

*6. Agreement and Control period The tariff determined by the commission in the tariff order shall be applicable for the power purchase agreement period of twenty years. The control period may be three years. When the Commission revisits the tariff and allied issues, the revision shall be applicable only to the generator of new and renewable energy sources commissioned after the date of such revised order."*Amendment to the Power Procurement from New and Renewable Sources of Energy Regulations, 2008 Notification No. TNERC / NCES Regn /16/11, dated 19-01-2013:

"(ii) In regulation 6, the expression "and allied issues" shall be omitted;
EXPLANATORY STATEMENT

Further, whenever tariff order is revised, the revised tariff is applicable only to the NCES generators commissioned after the date of such revised order, but the revision of allied issues is applicable to all the NCES generators irrespective of the date of commissioning."

Hence the Hon'ble Commission has the power to revisit the allied issue in view of the new development by way of lifting of restriction under sec 11 of the Electricity Act 2003 permitting the generator to sell the power outside the state and the larger meaning of lifting of restriction under Section 11 of the Electricity Act 2003 permitting the generators to sell the power outside the state is because of the surplus power position of the utility and this situations of surplus power and opening the avenue of selling power to other states is a major development in light of the situation when the tariff order 3 of 2016 was perused during January 2016,

when the state's power position is not so good which forces the State Government for restriction of sale of power to other states under section 11 of the Electricity Act 2003.

6. The contention of the SIMA and their calculation is misleading and devoid of facts. The way of calculation itself is wrong. The Hon'ble Commission rightly observed in its finding in R.A.6/2012 vide 8.2 (iv) as:

"Let us try to understand as to what happens to the energy banked at the time of its injection as well as its withdrawal. When the generator generates more energy than what he can consume the extra energy thus generated and injected into the grid is the banked energy. The law of electricity dictates that at any point of time the energy injected shall exactly be equal to the energy consumed. It can't be more or less but need to be exact. Therefore one may wonder as to what happens to extra energy injected in. As the supply has to be equal to the demand, the above energy may be consumed in the following ways:

- i. Creating a demand locally within the area of licensee*
- ii. Backing down generation from other sources of energy*
- iii. Allowing the extra energy to pass through the licensee's boundary as Unscheduled Interchange (UI)*
- iv. Selling to other licensees or parties.*

When demand and supply equal each other, creating a demand within the licensee's area to absorb the additional generation is theoretically difficult one. May be, for example, the licensee would increase the number of hours of supply to the consumers like agriculture where they are required to be fed for a restricted hours. The revenue to the licensee out of this mode of adjustment is nil since it is getting paid annual subsidy by the Government of TamilNadu on fixed number of units per horsepower per annum basis.

Another possibility is to back down generation from power plants operating with other resources. The technical limitations would restrict the quantum or level up to which the backing down can be resorted to. Further as the backing down progressively increases the variable cost of power from such sources would see a rapid dip.

It may also be possible to let the energy flow into the grid and be consumed by any other utility/licensee who is in need at that point of time. Payment for such energy transaction is settled under UI mechanism or deviation settlement mechanism. The Grid code

discourages the practice of unscheduled interchange and stipulates stringent conditions and penal measures.

Finally the extra power can be sold in the market. If the licensee can foresee the quantum of excess energy that may be available, in advance, it has the option of selling the same through the exchanges. As the quantum that could be banked on the given day is pretty difficult to predict in advance and initiate sale of the same through the exchange. Again the rate that can be realized from selling through exchanges depends on the demand vs supply equation. As additional energy is tended to be sold in the exchange the final derived rate would tend to go down from what it would be in the absence of such energy.”

From the above observation it is clear that the rate for the banked energy is a dynamic parameter in nature which depends on the number of variable factors such as UI rate, supply & demand criteria etc.

Considering the above facts it is highly an imaginary calculation which needs no further consideration. Further the purchase rate and realization rate adopted for the calculation by the stakeholder, it is stated that the rate adopted cannot be taken as it is, since the cost of supply at the consumer premises includes distributions and commercial losses of around 20% in addition to the investment and administrative cost to TANGEDCO which when added is much more than the value taken by the stakeholder, which are conveniently omitted by the stakeholder. Similarly the realization rate is to be deducted with the distributions and commercial losses of around 20% in addition to administrative expenses etc., to TANGEDCO which are difficult to quantify.

6.1 Further it is submitted that, the contention of majority of the stake holders is that “The wind generations have supported the TANGEDCO grid during the difficult time of April to September and the banked energy is only taken back by the generator during October – March and is in fact earning profit by banking”. The following facts are submitted to the Hon’ble Commission for kind perusal.

6.2 During the current financial year TANGEDCO has evacuated the maximum capacity of infirm and variable wind generation and integrated

in to the grid with much difficulties and sacrificing its own low cost other generation which resulted in heavy financial burden as follows:

6.3 TANGEDCO ran its thermal plants of 4000 MW capacity with around 60 to 70% PLF by which sacrificing the economy of operation and incurred higher cost of generation in addition to the strain on the life of the thermal power station.

6.4 TANGEDCO shut down / backed down most of its low cost Hydro, IPP & CPP plants with LTOA/MTOA purchase which resulted in incurring / paying the fixed cost without actually utilizing the energy.

6.5 TANGEDCO surrenders Central Generating Station share during the above high wind season and paid the fixed cost.

6.6 TANGEDCO operated the grid within the CERC regulated band width of 49.95 to 50.05 (that is within the variation of ± 250 MW) to integrate generation from the large wind capacity of 7600 MW which is technically challenging and that too without sufficient availability of spinning reserve. By this the TANGEDCO incurs heavy cost by way of penalty and deviation settlement mechanism as per the CERC Regulations, and at some times pumped the wind energy to other States for Zero cost.

6.7 The losses on the above grounds comes to substantial amount which is the cost of banking to the captive generators without taking into account the cost of resupply of banked units.

6.8 Hence the contention of the wind generators that TANGEDCO made profit out of banking is totally wrong in view of the changed circumstances of surplus power position after the Wind Tariff order No.3 of 2016, dt:31.03.2016.

6.9 In short it is submitted that the TANGEDCO has evacuated maximum wind generations, in other words helped the wind generators to bank their wind energy (*since around 70% of the generations are captive generators*) by incurring heavy financial and technical burden which is very difficult to quantify as accepted by the Hon'ble Commission in its order on R.A. No.6 of 2012, dt:31.03.2016. The banking charge covers only the partial expenses of evacuation.

6.10 Ironically this banked energy is to be supplied back to the captive generators during October to March period which is also high demand / high cost period, by purchasing high cost power from the traders. Hence the burden and cost of resupply of power is also to be borne by TANGEDCO. The claim of the stakeholder and comparing the average cost of power purchase and average cost of revenue realization is irrelevant on the grounds that the cost at supply point in distribution level is much higher when added with technical / commercial losses which are normally around 20%. Similarly the cost of average revenue realized is to be deducted with technical / commercial losses of around 20%. Hence the claim of the stakeholder that the TANGEDCO have gained around Rs.330 Crores is misleading.

6.11 Further the average revenue realization is not to be taken as it is, since, TANGEDCO's revenue varies from free power to Agriculture, huts, power looms, subsidized power to Domestic, public water supply etc.

7.0 In view the above facts it is stated that, your claim that the TANGEDCO in fact is earning profit is devoid of facts and to be rejected.

Annexure III

(Brief summary of the comments of the Stakeholders who directly offered their Comments to the Commission)

1. Thiru S.Narayanaswamy, Member (Generation) Retired, TNEB (Retired),

He has stated as follows:-

- (i) There is no provision in the Act or in the Tariff Oder No.3 dated 31-3-2016 that any of the clause of the order can be amended before the Control Period is over.
- (ii) The banking period relates Period relates to transmission of energy of Captive Power Producers and banking the monthly surplus energy and the question of competitive bidding does not come in here.
- (iii) No new circumstance has come up now for review by Hon'ble Commission. The subject of banking was discussed in several forums and explained that the banked wind energy has been stored by TANGEDCO in the form of water in their hydro storage dams and let out in the summer. It is understood that because of the banking of surplus units of the captive power units, no dam of TANGEDCO has surplus and let out without generation of power in the last twenty years and it has only helped to conserve the storage to improve generation in summer and mitigate their peak load meeting generation problem in summer.
- (iv) The drawal of banked energy by captive units has no relation to heavy drawal of power by other consumers in summer due to increase in consumption (which is a regular feature every year).

- (v) Any modification can be on unavoidable technical grounds only and not for making money. If it involves saving of money, money shall be returned to the generators.
- (vi) Regarding the power purchased from outside at the so called higher price, captive generators are in no way responsible for that as they are only drawing their power banked and it cannot be a loss to TANGEDCO as banking charges has been paid by them.
- (vii) Increase in demand will be there in summer and there will be problem in meeting the demand if adequate precautions are not taken in advance to meet the problem. If the banking period is limited to 31st December, the captive consumers will instead avail TANGEDCO power to meet their requirement and the higher demand will be there.
- (viii) The sell bids were more than the buy bids and there is over supply in the power market. Average price of energy per unit has never exceeded Rs.2.91 in any month and well below that of the tariff announced for wind energy. The price was stable in all the months including summer.
- (ix) The peak spot purchase price of energy has gone above Rs.5.00 in six days in the year 2016 and only two days in the period January to March 2016.
- (x) There is no truth in the claim of TANGEDCO that they are purchasing energy at a higher rate to meet the demand of captive consumers to enable them to use their banked energy during January to March.

2. Thiru K.Sathasivam and M/s.Pioneer Jellice India Private Limited:-

They have submitted as follows:-

- (i) TANGEDCO has contravened Regulation 6 of TNERC Determination of Tariff Regulation which stipulates "Annual Revenue Requirement (ARR)" is to be filed before 30th November of every year, but the same is not filed as seen from TANGEDCO website.
- (ii) TANGEDCO has contravened Regulation 15 of TNERC Determination of Tariff Regulation which stipulates, "Annual Accounts" is to be filed before 30th November of every year. It is found, the annual accounts for the year ended 31.03.2016 has not been filed as seen from TANGEDCO website and Ministry of Corporate Affairs website.
- (iii) TANGEDCO has contravened, section 55 of Electricity Act, 2003 which stipulate, power to be supplied only through Meters. Contravening this provision has disabled TANGEDCO to collect correct power cost from State Government for free supply of power effected to various consumers on state Government directions.
- (iv) There is no provision to modify the clauses before the expiry of the Control Period. The modification can be suggested only in the next tariff revision Hence, TANGEDCO petition filed seeking modification of wind energy tariff regulations before expiry of 9 months is invalid.
- (v) The Commission shall promote generation of electricity in renewable sources of energy.
- (vi) The present "Banking Period" followed has resulted in loss to TANGEDCO is false due to following reasons:-
 - (a) TANGEDCO claim of abnormal higher cost of power during the period January to June is not true if the rate of power fixed in power exchange during this period for power sale is taken into account. The average power

sale price in IEE (Indian Energy Exchange) during January 2016 to June 2016 was around Rs.4/- per unit and not Rs.14/- per unit as falsely claimed by TANGEDCO.

(b) Wind Mills in Tamil Nadu generate power mainly during June to October (5 months) which is permitted to be banked and adjusted in subsequent 5 months which is realistic. Curtailing banking period to inflict loss on wind mill generators is a retrogrative step which will discourage new wind mills installation.

(c) Based on assurance of banking alone, industrial units have established wind farms for captive consumption. Changing the policy will make wind farm un-viable which is against "Principle of Estoppel".

(d) The wind power order dated 31-03-2016 should not be altered within 2 years.

3. Tmt. Gajageswari Sangavi:-

In her e-mail dated 05-02-2017, she has submitted as follows:-

(i) The lack of information and claim of loss cannot be commented upon. Hence, the petition needs to be withdrawn.

(ii) Many of the sale to Board generators have been converted to captive generator due to following reasons:-

- | | | |
|------------------|---|-------------|
| - Coimbatore EDC | - | October 15 |
| - Tiruppur EDC | - | January 16 |
| - Dindigul | - | December 15 |
| - Udumalpet | - | May 16 |
| - | | |

(iii) TANGEDCO has not filed the ARR for the last several years. Inspite of change in power available scenario (cost and availability)

4. M/s. Indian Wind Power Association, Coimbatore, M/s. Sree Devi Chemicals, Tirupur and M/s.Tata Power Renewable Energy Ltd.:-

They have stated as follows:-

- (i) The present petition is clearly one relatable to a tariff order and is therefore not maintainable in the form of a Miscellaneous Petition. Banking in connection with Wind Energy is part of a tariff order and is intrinsically connected to determination of tariff.
- (ii) Regulation 8 of the Commission’s “Power Procurement from New and Renewable Sources of Energy Regulations, 2008: is specifies the following issues:-
 - (1) Applicable demand charges
 - (2) Applicable energy charges
 - (3) Grid availability charges
 - (4) Scheduling and system operation charges
 - (5) Transmission & Wheeling charges and line losses
 - 4[5A) Banking charges]4
 - (6) Reactive power charges
 - (7) Adjustment of peak and off peak power.

.....”

The said Regulation clearly stipulates that the Banking charges has to be decided as part of the tariff order.

- (iii) The banking charges fixed by the Commission in every comprehensive wind energy order is also a tariff for that control period specified by the Commission in that order.

- (iv) No tariff application has been filed by TANGEDCO, when in fact the provisions of the Electricity Act, 2003 expressly states that an application has to be filed as tariff application.
- (v) A petition relating to change in Banking year cannot be filed prior to the expiry of the control period without any prayer seeking for any change of control period or grounds for seeking such change in control period.
- (vi) The open access charges, banking charges and other such terms and conditions specified in the tariff order shall be applicable to all the wind energy generators, irrespective of their date of commissioning. As per the Order No.3 of 2016, the banking period has been fixed from April to March and the control period has already been fixed.
- (vii) Change in banking period to calendar year has already been considered and rejected by the Hon'ble Commission in the 2016 Wind Tariff Order. Therefore, any claim in that regard is barred by resjudicata.
- (viii) No appeal or review has been preferred against the 2016 wind tariff order. Therefore, TANGEDCO cannot seek to do indirectly what it has not done directly.
- (ix) Change in banking period is not maintainable since the same would be contrary to the National Electricity & Tariff Policies as also the CERC & TNERC Regulations pertaining to RPO which premise all calculations for wind energy only on a financial year basis.
- (x) The Electricity Rules, 2005 require calculation on the basis of a financial year, banking period cannot be changed and such a prayer is not maintainable.
- (xi) Almost the entire wheeling of wind energy in Tamil Nadu is meant for captive use within the State. The wheeling agreements are meant for the life period

of WEGs. Then where is the question of taking the power to other States. Wheeling the power for captive use is the facility granted by the Electricity Act, 2003 and TANGEDCO cannot suggest something which is detrimental to the WEGs. This also defeats the very purpose of providing open access under the statute.

- (xii) The banking period which has a great and substantial impact upon the return from investment in a WEG cannot be sought to be interfered with in isolation as is sought to be done. Further any tariff order is only prospective in operation and the Petitioner is seeking for changes even in respect of already commissioned WEGs. Thus, the petition is not maintainable.
- (xiii) Changing the banking period to calendar year will defeat the very purpose of providing the banking provision for WEGs in the Regulations and in the order. Around 60% of the WEGs are banking their energy for their captive use. Based on their consumption during the lean period of 6 months, the WEGs are deciding their capacity of WEG installation. Hence, if the banking period is revised to calendar year, there will be excess generation and their installed capacity will get stranded. The industries using captive wind energy have invested upto 80% of the annual power requirements from wind mills, if the banking period is reduced to December, their whole investment plan will go wrong.
- (xiv) Banking provision is a part of the tariff order and any part of the tariff order cannot be amended within the control period specified in the said order.
- (xv) The only reason repeatedly expressed by the TANGEDCO is the loss incurred by the TANGEDCO by providing banking to the wind energy. This issue has

been deliberated in detail by the Commission in the wind energy order dated 31-03-2016.

5. M/s.The Southern India Mills' Association, Coimbatore:-

They have stated as follows:-

- (i) The wind energy continuously saved the TANGEDCO during the severe power cut period atleast for the period of six months every year from April to September. The huge installed wind generators alone are regularly supporting the TANGEDCO. It is not only on the generation but also on the power price. TANEDCO's average power purchase from wind is only around Rs.3.25/unit whereas the other source of power is more than Rs.4/- per unit. Hence, the primary responsibility of TANGEDCO is to protect the wind generator in all means.
- (ii) Purely based on the promise provided by the Government for the installation of Wind generators textile mills invested heavily. To protect their interest, this banking alone is the only remedial and sustainable energy solution for the textile mills in Tamil Nadu and it is to be retained between April and March every year.
- (iii) The Group Captive is also considered under Rule 3 of the Electricity Rule, 2005, wherein it is determined based on financial year. Further, section 2 (n) of the TNERC (Renewable Energy Purchase Obligation) Regulation, 2010 "Year" means a financial year commissioning from 1st April of the current year and ending with 31st March of the succeeding year. Therefore, the banking period should be during the financial year.

- (iv) The TANGEDCO average realization for selling one unit of power is around Rs.6/unit. However, its average power purchase in all ways and means is less than that and hence, there is no question of incurring loss by TANGEDCO on account of allowing the banking period from April to March.
- (v) TANGEDCO did not furnish any data and particulars in their M.P No.24 of 2016 to establish their stand of incurring loss due to allowing of banking between April and March every year.
- (vi) The Government have lifted the ban which is considered to be a welcome feature of the TANGEDCO to establish that the State has enough resource of power and they are able to serve all category of consumers without any power interruption. This is nothing to do with the changing of banking period. On the other hand, when the power itself is surplus and the Government itself is able to sell to other State, the power price is substantially get reduced and hence, there is no question of purchasing high cost power to meet the requirement of banked wind energy generators.
- (vii) The proposal put forth by the TANGEDCO is contrary to the provisions of the Electricity Act, 2003, Power Procurement from New and Renewable Sources of Energy Regulations 2008, Tamil Nadu Electricity Regulatory Commission Intra-State Open Access Regulations 2005, Tamil Nadu Electricity Regulatory Commission (Terms and Conditions for Determination of Tariff) Regulations, 2005 and the comprehensive Wind Energy Tariff Orders passed by the Commission.
- (viii) As the Tariff changes should normally be applied to take effect from the 1st day of ensuing financial year an application for Determination of Tariff by the Licensee in Form 1 in Annexure 1 to the TNERC Conduct of Business

Regulations should have been filed before 30th November of Current Year along with Aggregate Revenue Requirement (ARR). No such application has been filed by TANGEDCO when in fact the provisions of the Electricity Act, 2003 expressly state that an application has to be filed as Tariff Application. Hence the Miscellaneous Petition filed by the TANGEDCO is against the provision of the Electricity Act, 2003 and the Regulation made thereon.

- (ix) The change in banking period to calendar year already considered and rejected by the Commission in the 2016 Wind Tariff Order. Therefore, any claim in that regard is barred by res judicata.
- (x) When the entire wheeling of wind energy is meant for captive use within the State and that the wheeling agreements are for the life period of WEGs, taking the power to other States is a question. Wheeling the power for captive use is the facility granted by the Electricity Act, 2003 and TANGEDCO cannot suggest something which is detrimental to the WEGs instead of implementing the Act provisions.

6. M/s. Tamilnadu Spinning Mills Association, Dindigul:-

They have stated as follows:-

- (i) Tamil Nadu is a State where the industrial concentration is very high. All types of power intensive industries are located in Tamil Nadu. The industrial concentration is spread over at various places. After seeing that the industries could harness the wind into green and clean power and when they have the facility of wheeling the green energy to their respective destinations, most of the industries have set up their own WEGs in the State for the purpose of captive consumption of power and accordingly, the policies existed and

continued hither to have, also helped to promote the clean and green energy to the maximum extent. Besides to a majority portion of total WEG capacity, few entities are engaged in generating wind energy and supplying to the utility making it something at 70: 30 ratio. Those who are selling to the utility have now started to withdraw the EPA and entering into EWA, due to the continuous delayed payments, they experienced with TANGEDCO for years together. If payment for the energy they supplied has been made in time as per the EPA, more WEGs would not have switched over from EPA to EWA. Hence, the increasing percentage of captive consumption cases are due to the continuous delayed payment system followed by the TANGEDCO .

- (ii) All the windmills have to depend mainly on the South West Monsoon period and accordingly, to make them financially viable from the energy generated, during the active wind seasons, the facility of banking was provided to WEGs, historically from October 1983.
- (iii) The Commission has always been ordering to maintain a consistency in the matter of allowing banking facility to WEGs and whenever, the TANGEDCO pleaded for withdrawal of banking facility, the Commission, quoting the National Electricity Policy and its own Regulation, has every time rejected the claim of TANGEDCO in the matter of withdrawal of banking facility to WEGs.
- (iv) The question whether to consider the banking is a facility or a contractual and judicially recognized system was already answered fully both the Commission and APTEL. Therefore, the TANGEDCO cannot attempt to revisit the same at this scenario and any attempts to seek approvals to withdraw the banking system for new windmills which are going to be commissioned on or after 01-

11-2016 and to alter the existing system of banking, are considered as illegal and unsustainable due to the pronouncement of regulatory orders.

- (v) The whole world is encouraging the renewable energies in every possibility as they do not like to disturb the environment and eco system in any manner. When the whole world is worrying about the global warming and GHG Emissions, having such a potential to harness the wind power in Tamilnadu, neglecting to support by policy and regulatory assistance and taking a retroactive position against WEGs would be a great injustice not only to the State but also to the World humanity as such.
- (vi) In fact, for better harnessing of wind power, the banking period should be allowed to start by 1st June every year by which date, the season starts and allowed to be closed by 31st May by which the next season restarts. Hence, in order to support harnessing of green energy, the best practice would be to keep the banking period from June–May and not from April-March. It can never be even on Financial Year basis. However, our representations made during the consultative process of issuance of earlier tariff orders, have not been considered by the Commission taking into the aspect in the right spirit. However, we have satisfied to see that at least, the banking system is allowed for a period of 12 months from 1st April to 31st March.
- (vii) Changing such a historical practice is not required what so ever may be the reason. Moreover, such a system cannot be changed because of the other interconnected provisions of Electricity Rules 2005.
- (viii) The captive consumers of any energy, is subjected to compliance of the "Captive Consumption Norms" in respect of their financial stake as well as on the consumption of power in a specified time period with a specified quantum.

The time period for verification of the captive consumption compliance norms is provided as "Annual Basis" and accordingly, the term "Annual Basis" is also defined as Financial Year, as per the above quoted provisions under the Electricity Rules 2005. Hence, in order to satisfy the eligibility to become a captive consumer, only the consumption made during the Financial Year is required to be taken for account and therefore, to qualify the captive consumption norms, the statute provides only the Financial Year for verification of the norms. Hence, under the authority of the above quoted statute, changing the Annual Basis of Financial Year to Calendar Year is not legally possible by any manner.

- (ix) While the control period is still continuing till 31.03.2018, attempting to alter the terms and conditions by filing a Miscellaneous Petition, is not permissible by law. Also as per the legal provision made available in Clause 6 of the Power Procurement from New and Renewable Sources of Energy Regulations, 2008 of the Commission such an attempt to seek revision is not possible legally. In view of the fact and legal position that the control period was already prescribed and is continuing still 31.03.2018, any attempt to modify or revise the same by filing a petition and seek to alter the terms and condition, is to be dismissed in limine, as such an effort is unsustainable to law.
- (x) The Commission in Order No.3 of 2016 dated 31.03.2016, after due process of law, has allowed the banking scheme to continue for 12 months from 1st April to 31st March by rejecting the request of TANGEDCO to maintain it from January to December. It is found in the above observations that the

TANGEDCO has already made a claim to alter the banking period from financial year to calendar year and however, after considering all the aspects, the Commission has made it already settled by law by fixing it on a Financial Year of 12 months from 1st April to 31st March. The order already issued by the Commission would also be validly in force till 31.03.2018. Hence, the matter as to how the banking period should be maintained, is already a settled matter. Therefore, any attempt to alter the settled matter is not permissible by law.

- (xi) The Energy Wheeling Agreements already entered and signed in between the TANGEDCO and the WEG developers, for captive consumption, the agreement clearly says that the banking period is to be maintained only on Financial Year wise.

"5. Banking:

- a. The Wind Energy Generator shall bank the energy generated in the windmill and the banking period shall be one year from April to March.
- b. The unutilized portion of banked energy if any shall be purchased by the licensee at the rate of 75% of the normal purchase rate.
- c. The banking shall be done slot wise to enable unit-to-unit adjustment.
- (xii) The concept of promissory estoppel and legitimate expectation also is involved while reviewing any terms of the EWA in respect of existing agreements, in the matter of altering the banking period. Any attempt to alter the banking period is opposed to the above quoted legal provisions also.
- (xiii) The high wind season in Tamilnadu starts only by June every year and mostly ends by September of the same year. Hence, considering the generation available during the high wind season between June and September, the

banking period has been fixed and maintained historically between April and March of next year, so as to allow the captive consumers to generate the wind energy by first four months and thereafter, coupled with the low generation happening during the low wind season, to meet out the power requirements for the next six months, which ends by March of the subsequent year with the current generation and also with the help of accumulated banked energy. This is the background of the reason as to why the banking period was allowed to be kept as financial year.

- (xiv) If the banking period is altered to be converted from financial year to calendar year, as sought for by the CE NCES in the petition filed, it would affect the interest of all the wind energy captive consumers by restricting the usage of the banked units only up to December. Thereafter, for consumption during the months of January-March, no banking unit would be made available for anyone as the banking period would be closed by December. This would take away the rights of the wind energy captive consumers as was ensured by various statutory orders provided by Hon'ble APTEL and also by the Commission. The energy generated and excess energy banked during the high wind season of four months, coupled with the current generation, requires to be consumed only at a period of six months. Even with this four months' energy generation, energy is getting unutilized at the end of the financial year and encashments are happening at the end of March, when the banking account is closed at the present scenario. Hence, allowing to alter the banking arrangement from financial year to calendar year would collapse the whole system and all the wind energy generators would become financially sick.

- (xv) The banking period, if allowed to be closed by December, the energy for encashment would be abundantly available to TANGEDCO and the said energy is allowed for encashment only at the 75% of its sale value. Mostly, at the cost of 75% of Rs.2.75/unit, it will be allowed for encashment at Rs.2.06 per unit, whereas the TANGEDCO would have sold the energy and realized the money already at Rs.6.57/unit on an average to industrial consumers.
- (xvi) The captive WEGs are wheeling the power produced by them through their own WEGs only after paying banking charges and wheeling charges and all other charges as fixed by the Commission and therefore, the wheeling of captive power is not allowed free of cost. In fact, for wheeling of captive power, the WEG captive consumers are paying the following costs.
- i. Reactive Power Charge
 - ii. T&D loss
 - iii. Transmission Charge
 - iv. Wheeling Charge
 - v. Banking Charge
 - vi. Scheduling and System Operation Charge
 - vii. Operation and Maintenance Charge.
- (xvii) TANGEDCO has never provided any documentary proof, as how it is incurring losses due to banking.
- (xviii) Even assuming that the TANGEDCO is incurring losses due to the banking scheme, the retail tariff fixed for distribution of power, has been worked out and approved by the Commission, based on the ARR provided by TANGEDCO and therefore, all such losses are getting fully adjusted and recovered in the new retail tariff and there cannot be any loss to TANGEDCO as claimed.
- (xix) The correct subsidy having been not claimed during all the years, is due to non-metering of such consumptions and in utter violation of section 55 of the

Electricity Act 2003 regarding provision to install meters in all electricity supplies.

- (xx) The claim of TANGEDCO of abnormal higher cost of power during the period January to June is not true, when we look in to the cost of power available from power exchanges during this period.
- (xxi) The cost of purchase of power from Central Government Undertakings such as Neyveli Lignite Corporation, NTPC etc., has not been factored and taken into consideration which is also less than the power sale price of TANGEDCO to industrial consumers.
- (xxii) The TANGEDCO claims that it is forced to purchase power at Rs.14 per unit which statement is not correct. The Commission has never approved this purchase price of power at Rs.14 per unit as stated by the TANGEDCO.
- (xxiii) Wind Mills in Tamil Nadu generate power mainly during the months of June to September (4 months) which is permitted to be banked and adjusted in subsequent 6 months (October to March) which is totally realistic and being practiced.
- (xxiv) Banking is a promotional measure granted to Renewable Energy Sources under Section 61(h) and 86(1)(e) of the Electricity Act, 2003, which mandates the State Commission to promote the renewable energy sources. Further, wind energy being a seasonal factor and infirm in nature, is dependent upon very much on banking and without the banking facilities being extended, it will not be possible for wind energy sector to remain financially viable and competitive, even though it is a green and clean power.

- (xxv) Making a request to withdraw the banking facility for the new windmills which are going to be commissioned from 01.11.2016 is also baseless and it goes against the very fundamentals of promoting power through renewable energy sources as guaranteed by the Electricity Act 2003. Such an attempt would be retroactive to the interest of Civil Society when the whole world is attempting to reduce GHG Emissions to bring down the global warming.
- (xxvi) When there is no banking facility and that too, on a Financial Year basis, no wind installations and investments, would come to Tamil Nadu anymore. The capacity available to the extent of another 26100 MW would go wasted and will not get harnessed

7. M/s.Vindhya Spinning Mills (P) Ltd., Sivakasi:-

They have stated as follows:-

- (i) TANGEDCO has contravened Regulation 6 of TNERC Determination of Tariff Regulation which stipulates "Annual Revenue Requirement (ARR)" is to be filed before 30th November of every year.
- (ii) TANGEDCO has contravened Regulation 15 of TNERC Determination of Tariff Regulation which stipulates, "Annual Accounts" is to be filed before 30th November of every year. It is found, the annual accounts for the year ended 31.03.2016 has not been filed.
- (iii) TANGEDCO has contravened, section 55 of Electricity Act, 2003 which stipulate, power to be supplied only through Meters. Contravening this provision has disabled TANGEDCO to collect correct power cost from State Government for free supply of power effected to various consumers on state Government directions.

- (iv) TNERC in clause 10.11.16 of its Comprehensive Tariff order bearing No.3 of 2016 dated 31.3.2016 on wind energy has fixed tariff regulations of wind energy and there is no provision to modify the clauses before the expiry of the control period. The modification can be suggested only in the next tariff revision.
- (v) Banking charges / banking period was fixed by TNERC in its order dated 31.3.2016 as per Regulation 4(h) of TNERC Determination of Tariff Regulation, 2005 against the banking period fixed in TNERC order dated 31.03.2016, no appeal has been filed with the Appellate Authority by TANGEDCO which clearly proves, the banking period stipulated by TNERC has been accepted by TANGEDCO.
- (vi) TANGEDCO has not given cost of power generated in its various thermal plants Gas Power plants; Hydel plants; wind farms which is lower than cost of power sold to industrial units. Further the captive wind power generators who only wheel power produced in their wind farms for captive consumption after paying banking charges and wheeling charges, have nothing to do with the loss of TANGEDCO and there is no relation between both.
- (vii) TANGEDCO claim of abnormal higher cost of power during the period January to June is not true if the rate of power fixed in power exchange during this period for power sale is taken into account. The average power Sale price in IEE (Indian Energy Exchange) during January 2016 to June 2016 was around Rs.4/- per unit and not Rs.14/- per unit as falsely claimed by TANGEDCO.

- (viii) Purchase cost of power from Central Government undertakings such as Neyveli Lignite Corporation; NTPC etc., not indicated which cost is also less than power sale price of TANGEDCO to Industrial consumers.
- (ix) Power purchase price by TANGEDCO is to be approved by TNERC. TANGEDCO claim that they are forced to purchase power at Rs.14/- per Unit, whether this purchase price of power at Rs.14/- per unit stated by TANGEDCO in its petition was approved by TNERC is to be ascertained. Further, TANGEDCO has not given details regarding the quantum and the Name of the party from whom they have purchased power at Rs.14/- per unit and who authorised this purchase.
- (x) Transmission and Distribution loss Claimed by TANGEDCO at 18% is too high when compared to T&D loss of 1.8% claimed by Tata Power in Mumbai. High T&D% loss is due to power pilferage. This loss if arrested, TANGEDCO profit will be huge.
- (xi) Wind Mills in Tamil Nadu generate power mainly during June to October (5 Months) which is permitted to be banked and adjusted in subsequent 5 months which is realistic. Curtailing banking period to inflict loss on wind mill generators is a retrogrative step which will discourage new wind mills installation.
- (xii) TANGEDCO contention that wind mill generation banked with TANGEDCO during 5 months (June to October) is unable to be used is false as no statistics provided in this regard.
- (xiii) Based on assurance of banking alone, industrial units, have established wind farms for captive consumption. Changing the policy will make wind farm un-viable which is against "Principle of Estoppel" upheld by Apex Court in

various judgments. Further, for wind mills different banking period should not be followed which amounts to discrimination in policy between wind mills.

- (xiv) If Banking is banned, wind farms should be permitted to sell power to any third party on existing charges collected from wind mills towards wheeling/transmission charges etc. and without cross subsidy charges, since TANGEDCO has stated that they are unable to sell wind power banked during windy season.
- (xv) Every industry including TANGEDCO has got a social obligation to encourage industries, providing opportunities for job generation, paving way for increased revenue collection to Government by way of duties and VAT etc. Now TANGEDCO wants to kill the industries, going away from what has been promised earlier, harassing the wind mill generators by introducing impractical conditions and ultimately killing the prosperity of the State of Tamil Nadu.

8. M/s.Tamil Nadu Electricity Consumers' Association:-

They have stated as follows:-

- (i) The Commission has always been ordering to maintain a consistency in the matter of allowing banking facility to WEGs and whenever, the TANGEDCO pleaded for withdrawal of banking facility, the Commission, quoting the National Electricity Policy and its own Regulation, has every time rejected the claim of TANGEDCO in the matter of withdrawal of banking facility to WEGs.
- (ii) The TANGEDCO's attempts to seek approvals to withdraw the banking system for new windmills which are going to be commissioned on or after 01.11.2016 and to alter the existing system of banking, are considered as

illegal and unsustainable due to the pronouncement of regulatory orders in Order No.1 of 2009 dated 20-03-2009.

- (iii) All the Captive Consumers have planned to use the Banked units upto March end as per the existing Banking period. By changing the Banking period subsidy with effect from 01.11.2016, it will lead to heavy loss to the Captive users.
- (iv) The time period for verification of the captive consumption compliance norms is provided as "Annual Basis" and accordingly, the term "Annual Basis" is also defined as Financial Year, as per the above quoted provisions under the Electricity Rules, 2005.
- (v) If the Banking period is changed, it is very difficult to use entire banked Units in the short period of three months (October to December). This would take away the rights of the wind energy captive consumers as was ensured by various statutory orders provided by Hon'ble APTEL and also by the Commission. Allowing altering the banking arrangement from Financial Year to Calendar Year would collapse the whole system and all the wind energy generators would become financially sick. The banking period, if allowed to be closed by December as sought for by the CE NCES in the impugned petition, the energy for encashment would be abundantly available to TANGEDCO and the said energy is allowed for encashment only at the 75% of its sale value. Mostly, at the cost of 75% of Rs.2.75, it will be allowed for encashment at Rs.2.06 per unit, whereas the TANGEDCO would have sold the energy already at Rs.6.57 on an average to industrial consumers.

9. M/s.Sree Ayyanar Spinning and Weaving Mills Limited, Mallanginar:-

- (i) Section 62.4 of Electricity Act, 2003 states that “No tariff or part of any tariff may ordinarily be amended, more frequently than once in any financial year, except in respect of any change expressly permitted under the terms of any fuel surcharge formula as may be specified”. Hence, there is no provision in the Act or in the Tariff Order No.3 dated 31-03-2016 that any of the clause of the order can be amended before the control period and TANGEDCO has to wait till the above referred control period is over.
- (ii) The drawal of banked energy by captive units have no relation to heavy drawal of power by other consumers in summer due to increase in consumption, which is a regular feature every year.
- (iii) TANGEDCO has not produced any relevant data-facts and figures-regarding the power purchased from outside at the so called higher price to substantiate their claim. TANGEDCO’s private power purchase appears to be done on yearly basis and not on seasonal basis.
- (iv) In the absence of any details regarding month-wise units banked, banking charges collected in kind and then converted into cash by selling that power to other consumers, monthly withdrawal after the windy season is over, total units surrendered by captive units as on 31st March of the next year and the gain made by TANGEDCO by selling that power to others at a higher rate. In the absence of any such details by TANGEDCO, the petition does not deserve any consideration and may please be rejected by the Commission.

10. M/s.Pioneer Jellice India P. Limited, Cuddalore:-

- (i) TANGEDCO has contravened Regulation 6 and 15 of TNERC “Determination of Tariff Regulation” inasmuch as it has not filed ARR and Annual Accounts.
- (ii) In the TNERC Comprehensive Tariff Order No.3 of 31-03-2016 on wind energy, TNERC fixed the tariff regulations for wind energy and there is no provision to modify the clauses before the expiry of the control period, one year.
- (iii) No appeal has been filed by TANGEDCO in APTEL authority against the banking period fixed by TNERC in its order dated 31-03-2016 which clearly proves that the banking period stipulated by TNERC has been accepted by TANGEDCO.
- (iv) As per the TNERC order dated 31-03-2016, the control period of the order is two years. Since under this order, banking period fixed is from April to March and cannot be changed before 31-03-2018.
- (v) TANGEDCO should state its average purchase price of power to ascertain whether TANGEDCO meets loss due to banking facility allowed to wind mills.
- (vi) TANGEDCO wants to destroy the industries, going away from what has been promised earlier, harassing the wind mill generators by introducing impractical conditions and ultimately destroying the prosperity of the State of Tamil Nadu.
